PP

v.

DATO' SERI ANWAR IBRAHIM (NO 2)

HIGH COURT MALAYA, KUALA LUMPUR
AUGUSTINE PAUL J
[CRIMINAL TRIALS NOS: 45-48-98 & 45-49-98]
12 APRIL 1999

CONSTITUTIONAL LAW: *Legislation - Resolution passed to repeal legislation retrospectively - Effect of such resolution - Prosecution instituted before resolution was passed - Whether defence's application defective - Emergency (Essential Powers) Ordinance No 22 of 1970*

CONSTITUTIONAL LAW: *Legislation - Repeal of - Application and effect of ss. 30 & 32 of Interpretation Acts 1948 & 1967 - Federal Constitution, art. 150(3)*

The accused had four charges preferred against him under s. 2(1) of the Emergency (Essential Powers) Ordinance No 22 of 1970 ('Ordinance No 22'). When the case was called up for hearing on 2 November 1998 the defence raised a preliminary objection, namely that Ordinance No 22 was promulgated pursuant to art. 150(1) and (2B) of the Federal Constitution ('the Constitution') arising from the Proclamation of Emergency in 1969, and that Parliament had on the previous day passed a resolution to repeal Ordinance No 22 retrospectively with effect from 8 January 1998. He added that although Ordinance No 22 had yet to be annulled by Parliament, the intention of the Government was to have the ordinance annulled in accordance with art. 150(3) of the Constitution with effect from 8 January 1998, and that the offences with which the accused were charged would no longer exist once the resolution in Parliament was passed. He added that pending the passing of the resolution in Parliament, it would be invidious and oppressive to continue to subject the accused to prosecution in respect of the four charges under Ordinance No 22.

The issues dealt with: (i) the application and effect of s. 30 of the Interpretation Acts 1948 & 1967 ('the IA') – s. 30 stating that "the repeal of a written law in whole or in part shall not affect the previous operation of the repealed law or anything duly done or suffered thereunder"; (ii) whether the saving provision contained in art. 150(3) of the Constitution excluded the application of s. 30 of the IA to it – the relevant parts of the saving clause being "… but without prejudice to anything previously done by virtue thereof …"; and (iii) whether there was a defect in the application by the defence considering that the prosecution was instituted before the resolution was even passed.

Held:

[1] Section 32 of the IA states that "ss. 28, 29, 30 and 31 shall apply on the expiry of a written law as they would have applied if that law had been repealed." Therefore, s. 30 of the IA applies to a statute which has expired and also to one which has been repealed before its expiry – hence the application of s. 30 of the IA to Ordinance No 22.

[2] The saving provision in art. 150(3) of the Constitution refers to anything previously done on the strength of Ordinance No 22. The words "… but without prejudice to anything previously done by virtue thereof …" do not refer to the commission of an offence as no offence can be committed on the strength of a statute. They also do not refer to the institution of a prosecution as no prosecution can be instituted on the strength of Ordinance No 22 but by virtue of art. 145(3) of the Constitution read with s. 376 of the Criminal Procedure Code. The saving provision in art. 150(3) of the Constitution is a general provision designed to apply generally, wherever possible, to all ordinances promulgated under art. 150(2B) of the Constitution. The saving provision therefore deals with notifications, directions or appointments made under a particular ordinance so as not to invalidate such acts upon the annulment of the ordinance concerned.

[2a] In any event, this provision is a special saving provision meant to supplement s. 30 of the IA and does not affect the general applicability of that section.

[3] The objection raised by the defence would arise for consideration only if Ordinance No 22 had been annulled by a resolution passed by both Houses of Parliament as prescribed by art. 150(3) of the Constitution. It is only then that Ordinance No 22 will cease to have any effect. Until then it will continue to be in force. It follows that as the required resolution has not been passed by Parliament yet, Ordinance No 22 is still in force with the result that any prosecution based on it is good in law. Furthermore, the prosecution was instituted before the resolution was even passed in Parliament. This further weakened the argument advanced by the defence.

[Preliminary objection dismissed.]

Case(s) referred to:
Basant Singh v. Rampal Singh AIR [1919] Oudh 217 ***(cit)***
Connelly v. Director of Public Prosecution [1964] AC 1254 ***(refd)***
David McCowan v. Baine [1891] AC 401 ***(cit)***
Duport Steel Ltd v. Sirs [1980] 1 All ER 529 ***(cit)***
Gopinchand v. Delhi Administration AIR [1959] SC 609 ***(cit)***
Hebbert v. Purchas [1871] LR 3 PC 605 ***(cit)***
Hui Chi-ming v. The Queen [1992] AC 34 ***(refd)***
In re Prince Blucher [1930] 47 TLR 19 ***(cit)***
Jotindranath v. Province of Bihar AIR [1949] FC 175 ***(cit)***
Karpal Singh & Anor v. PP [1991] 2 CLJ 1458 ***(foll)***
PP v. Low Ah Sang [1962] MLJ 13 ***(cit)***
R v. Wicks [1946] 2 All ER 529 ***(refd)***
R v. Humphrys [1977] AC 1 ***(refd)***
Ram Prasad v. State of Punjab AIR [1966] SC 1607 ***(cit)***
State of Orissa v. Bhupendra Kumar AIR [1962] SC 945 ***(cit)***
State of Punjab v. Mohar Singh AIR [1955] SC 84 ***(cit)***
State of UP v. Jagmanderdas AIR [1954] SC 683 ***(cit)***
Warburn v. Loveland 5 ER 499 ***(cit)***
Wicks v. Director of Public Prosecution [1947] AC 362 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 376
Emergency (Essential Powers) Ordinance No 22 of 1970, s. 2(1)
Federal Constitution, arts. 145(3), 150(1), (2B), (3), 160(1)
Interpretation Acts 1948 & 1967, ss. 3, 30(1), 32

Interpretation Act 1978 [UK], s. 16(1), (2)

Other source(s) referred to:
Statutory Interpretation, Francis Bennion, 2nd edn, p 201

For the prosecution - Dato' Abdul Gani Patail (Azahar Mohamed, Mohd Yusof Hj Zainal Abidin, Stanley C Augustin, Nordin Hassan & Shamsul Dato' Hj Sulaiman with him); A-G's Chambers

For the defence - Raja Aziz Addruse (Hj Sulaiman Abdullah, Christopher Fernando, Gurbachan Singh Pannu, Zainur Zakaria, Pawan Chik Merican, Kamar Ainiah Kamaruzaman, Sankara N Nair, Zulkifli Nordin & Robyn Choi with him); M/s Raja Aziz Addruse

Reported by Mariette Peters-Goh

JUDGMENT

Augustine Paul J:

Dato' Seri Anwar bin Ibrahim ("the accused") had four charges preferred against him under s. 2(1) of the Emergency (Essential Powers) Ordinance No. 22 of 1970 ("Ordinance No. 22"). They read as follows:

First Charge

That you, between the 12 August 1997 and 18 August 1997 at the Official Residence of the Deputy Prime Minister, No. 347, Damansara Road, in the Federal Territory of Kuala Lumpur, while being a member of the administration, to wit, holding the post of Deputy Prime Minister and Minister of Finance committed corrupt practice whereby you had:-

directed Dato' Mohd. Said bin Awang, Special Branch Director and Amir bin Junus, Special Branch Deputy Director II, Royal Malaysian Police to obtain a written admission from Azizan bin Abu Bakar to deny sexual misconduct and sodomy committed by you for the purpose of protecting yourself against any criminal action or proceedings, and as a result of which Azizan bin Abu Bakar had thereby made a written admission dated 18 August 1997 to the Prime Minister as directed,

and you have thereby committed an offence punishable under section 2(1), Emergency (Essential Powers) Ordinance No. 22, 1970.

Second Charge

That you, on or about the 27 August 1997, at the Official Residence of the Deputy Prime Minister, No. 47, Damansara Road, in the Federal Territory of Kuala Lumpur, while being a member of the administration, to wit, holding the post of Deputy Prime Minister and Minister of Finance committed corrupt practice whereby you had:-

directed Dato' Mohd. Said bin Awang, Special Branch Director and Amir bin Junus, Special Branch Deputy Director II, Royal Malaysian Police to urge Azizan bin Abu Bakar to give a written public statement by you for the purpose of protecting yourself against any criminal action or proceedings and as a result of which Azizan bin Abu Bakar had thereby given a written public statement as directed,

and you have thereby committed an offence punishable under section 2(1), Emergency (Essential Powers) Ordinance No. 22, 1970.

Third Charge

That you, between the 12 August 1997 and 18 August 1997, at the Official Residence of the Deputy Prime Minister, No. 47, Damansara Road, in the Federal Territory of Kuala Lumpur, while being a member of the administration, to wit, holding the post of Deputy Prime Minister and Minister of Finance committed corrupt practice whereby you had:-

directed Dato' Mohd. Said bin Awang, Special Branch Director and Amir bin Junus, Special Branch Deputy Director II, Royal Malaysian Police to obtain a written admission from Ummi Hafilda bt. Ali to deny sexual misconduct and sodomy committed by you for the purpose of protecting yourself against any criminal

action or proceedings, and as a result of which Ummi Hafilda bt. Ali had thereby made a written admission dated 18 August 1997 to the Prime Minister as directed,

and you have thereby committed an offence punishable under section 2(1), Emergency (Essential Powers) Ordinance No. 22, 1970.

Fourth Charge

That you, on or about the 27 August 1997, at the Official Residence of the Deputy Prime Minister, No. 47, Damansara Road, in the Federal Territory of Kuala Lumpur, while being a member of the administration, to wit, holding the post of Deputy Prime Minister and Minister of Finance committed corrupt practice whereby you had:-

directed Dato' Mohd. Said bin Awang, Special Branch Director and Amir bin Junus, Special Branch Deputy Director II, Royal Malaysian Police to urge Ummi Hafilda bt. Ali to give a written public statement to deny sexual misconduct and sodomy committed by you for the purpose of protecting yourself against any criminal action or proceedings and as a result of which Ummi Hafilda bt. Ali had thereby given a written public statement dated 29 August 1997 as directed,

and you have thereby committed an offence punishable under section 2(1) Emergency (Essential Powers) Ordinance No. 22, 1970.

The accused was charged with these four charges in the Sessions Court at Kuala Lumpur on 29 September 1998. Upon an application made by the public prosecutor the charges were transferred to the High Court for hearing and were mentioned before me on 5 October 1998 when they were fixed for hearing on 2 November 1998. When the case was called up for hearing on that day the defence raised a preliminary objection.

Raja Aziz Addruse, leading counsel for the defence, in arguing the objection raised said that the four charges against the accused are under s. 2(1) of Ordinance No. 22. He said that this ordinance was promulgated pursuant to art. 150(1) and (2B) of the Federal Constitution ("the Constitution") arising from the Proclamation of Emergency in 1969. He then referred to art. 150(3) of the Constitution which deals with the manner in which such an ordinance may cease to have effect. The clause reads:

A proclamation of emergency and any ordinance promulgated under Clause (2B) shall be laid before both Houses of Parliament, and, if not sooner revoked shall cease to have effect if resolutions are passed by both Houses annulling such proclamation or ordinance, but without prejudice to anything previously done by virtue thereof or to the power of the Yang di-Pertuan Agong to issue a new proclamation under Clause (1) or promulgate any ordinance under Clause (2B).

He referred to a report appearing in the New Straits Times dated 23 October 1998 to the effect that the Dewan Rakyat had on the previous day passed a resolution to "repeal" Ordinance No. 22 retrospectively with effect from 8 January 1998 following the enforcement of the Anti-Corruption Act 1997 this year. With regard to this resolution he referred to a report from the Hansard on the statement by the Minister who moved the Motion in the Dewan Rakyat. The material part of the report reads as follows:

> … … … sekarang saya kemukakan masalah bagi diputuskan. Masalah ialah bahawa usul di atas nama Yang Amat Berhormat Perdana Menteri iaitu bahawa Majlis ini membuat ketetapan mengikut Fasal 3 Perkara 150 Perlembagaan Persekutuan Ordinance 22 (Kuasa-Kuasa Perlu) Dharurat 1970 hendaklah disifatkan telah menjadi batal pada 8 Januari 1998, iaitu tarikh Akta Pencegahan Rasuah 1997 mula berkuatkuasa dipersetujukan. Usul dikemukakan bagi diputuskan dan disetujukan.

He added that although Ordinance No. 22 is yet to be annulled by the Dewan Negara the intention of the government, as expressed in the statement of the Minister who moved the motion in the Dewan Rakyat, is to have the ordinance annulled in accordance with art. 150(3) of the Constitution with effect from 8 January 1998. He said that as the intention of the government is to annul Ordinance No. 22 the offences with which the accused has now been charged with will no longer have existed with effect from 8 January 1998 once the resolution in the Dewan Negara is passed. He added that pending the passing of the resolution in the Dewan Negara it will be invidious and oppressive to continue to subject the accused to a prosecution in respect of the four charges under Ordinance No. 22. In support of this argument he referred to *Hui Chi-ming v. The Queen* [1992] AC 34 where Lord Lowry said at p. 54:

> The doctrine of abuse of process and the remedy of refusal to allow a trial to proceed are well established. As Lord Reid said in *Connelly v. Director Public Prosecution* [1964] AC 1243, 1296, there must always be a residual discretion to prevent anything which savours of abuse of process. The main modern authorities are *Connelly v. Director of Public Prosecution* and *Reg v. Humphreys* [1977] AC 1 and their Lordships refer to those cases for statements of principle.

He said that pending the full annulment of Ordinance No. 22 the trial in respect of the four charges should be stayed.

Learned counsel further submitted that the saving provision contained in s. 150(3) of the Constitution does not preserve offences under Ordinance No. 22 upon its annulment as they do not fall within the scope of the provision which reads as follows

> … but without prejudice to anything previously done by virtue thereof …

He started off this line of argument by referring to s. 30(1) of the Interpretation Act 1967 ("s. 30") which reads as follows:

> The repeal of a written law in whole or in part shall not –
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> (a) affect the previous operation of the repealed law or anything duly done or suffered thereunder; or
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> (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law; or
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> (c) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed under the repealed law; or
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> (d) affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,
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> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing law had not been made.

He said that s. 30 cannot be invoked to preserve any of the matters specified therein in Ordinance No. 22 following its annulment for two reasons. Firstly, the use of the words "… as if the repealing law had not been made" in s. 30 means that it is concerned with the repeal of one legislation by another. There is no repealing law in the case of the annulment of Ordinance No. 22 as it is annulled by the resolution of both Houses of Parliament. He said that the words from s. 30 that I have emphasised are clear and must be so construed. In support of his view that where the language of an Act is clear and explicit the court must give effect to it learned counsel referred to cases such as *In re Prince Blucher* [1930] 47 TLR 19; *Warburn v. Loveland* 5 ER 499; *David McCowan v. Baine* [1891] AC 401 and *Duport Steel Ltd v. Sirs* [1980] 1 All ER 529. He concluded by saying that as there is no repealing law in the annulment of Ordinance No. 22, s. 30 does not apply. Secondly, as art. 150(3) of the Constitution has its own saving provision any matter that is saved from the annulment must be determined by the words used in the provision. Learned counsel referred to some dictionaries to show that the phrase "by virtue of" in the saving provision means "on the strength of" or "through the force of law." He said that this meaning makes it plain that the commission of an offence does not come within the saving provision as no offence can be committed "by virtue of" Ordinance No. 22 with the result that offences committed under Ordinance No. 22 are not saved by its annulment.

In his reply Dato' Abdul Gani Patail said that Ordinance No. 22 has not been annulled as prescribed by art. 150(3) of the Constitution since the required resolution by the Dewan Negara has not been passed yet with the result that it is still in force. In any event, he said, s. 30 applies as an annulment referred

to in art. 150(3) of the Constitution must be treated as a repealing law. In support of this argument he referred to some dictionaries to argue that "repeal" has the same meaning and effect as "annul". He said that this would mean that s. 30 becomes applicable upon the annulment of Ordinance No. 22. He then referred to s. 32 of the Interpretation Acts 1948 and 1967 ("s. 32") to show that s. 30 also applies upon the expiry of a statute. He also said that the words "… anything previously done by virtue thereof …" in the saving provision in art. 150(3) of the Constitution carries the same meaning as "anything done under it" and therefore includes an offence committed under it. He then referred to *PP v. Low Ah Sang* [1962] MLJ 13 and *Wicks v. Director of Public Prosecution* [1947] AC 362 to contend that a prosecution for an offence under a repealed Act can be commenced and a conviction had even after its repeal.

I gave anxious consideration to the submission of both parties. My primary view is that the objection raised by the defence arises for consideration only if Ordinance No. 22 has been annulled by a resolution passed by both Houses of Parliament as prescribed by art. 150(3) of the Constitution. It is only then that Ordinance No. 22 will cease to have any effect. Until then it will continue to be in force. It follows that as the required resolution has not been passed by the Dewan Negara yet Ordinance No. 22 is still in force with the result that any prosecution based on it is good in law. I also pause to add that in this case the prosecution was instituted before the resolution was even passed in the Dewan Rakyat. This further weakens the argument advanced by the defence. With regard to the objection of abuse of process raised by the Defence I refer to the judgment of the (then) Supreme Court in *Karpal Singh & Anor v. PP* [1991] 2 MLJ 544 where Abdul Hamid Omar LP in writing for the court reviewed *Connally v. Director of Public Prosecution* [1964] AC 1254 and *R v. Humphrys* [1977] AC 1 and said that this inherent power may be exercised by the High Court only in rare instances where it is right to do justice to the accused. In relation to the procedure to be followed for the exercise of the power his Lordship said at p. 548:

> Generally, the procedure would appear to be that the accused should apply by motion to a High Court to quash the indictment and he then has to prove either on the face of the indictment or by an affidavit that the charge has been preferred without jurisdiction or has a substantial and apparent defect. We are not aware of any court acting merely on the oral statement of a counsel.

As the prosecution has been validly instituted by the public prosecutor as authorised by art. 145(3) of the Constitution when Ordinance No. 22 is still in force it cannot be said that the accused has been subjected to any injustice. In the premises I held that the prosecution of the accused does not amount to oppression and an abuse of process. Accordingly, the court cannot direct that

the prosecution must not proceed. In this regard I refer to *Connelly v. Director of Public Prosecution* [1964] AC 1254 where Lord Morris of Borth-y-Qest said at pp. 1300-1301:

> I consider that if a charge is preferred which is contained in a perfectly valid indictment which is drawn so as to accord with what the court has stated to be correct practice and which is presented to a Court clothed with jurisdiction to deal with it and if there is no plea in bar which can be upheld the court cannot direct that the prosecution must not proceed. I agree with what was said by Lord Goddard CJ in *Reg v. Chairman, County of London Quarter session, Ex Parte Dorone* [1954] 1 QB 1 that once an indictment is before the court the accused must be arraigned and tried thereon unless (on a motion to quash or demurrer pleaded) the indictment is held to be defective in substance or form and is not amended, or unless matter in bar is pleaded and the plea is tried and confirmed in favour of the accused or unless (after the indictment is found) the Attorney General enters a *nolle prosequi* or unless the court has no jurisdiction to try the offence disclosed by the indictment. In that case Lord Goddard said that he knew of no power in the court to quash an indictment because it is anticipated that the evidence would not support the charge; indeed, the only ground on which the court can examine the deposition, before arraignment, is to see whether (in a case where there is a count for which there has not been a committal) the depositions disclose the offence covered by that count. There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuse of its process and to defeat any attempted thwarting of its process. The preferment in this case of the second indictment could not, however, in my view, be characterised as an abuse of the process in the court.

And in *R v. Humphrys* [1977] AC 1 Viscount Dilhorne said at p. 24:

> Where an indictment has been properly preferred in accordance with the provisions of that Act (Administration of Justice [Miscellaneous Provision] Act 1933), has a judge power to quash it and to decline to allow the trial to proceed merely because he thinks that a prosecution of the accused for that offence should not have been instituted? I think there is no such general power and that to recognise the existence of such a degree of omnipotence is, as my noble and learned friend Lord Edmund-Davies has said, unacceptable in any country acknowledging the rule of law. But saying this does not mean that there is not a general power to control the procedure of a court so as to avoid unfairness.

In any event the accused has failed to make an application as advised by the (then) Supreme Court in *Karpal Singh & Anor v. PP* [1991] 2 MLJ 544.

Be that as it may, and notwithstanding the procedural defect in the application presented by the defence, it stands to be rejected the moment it is made if the annulment of Ordinance No. 22 activates s. 30 which is applicable to the interpretation of the Constitution pursuant to art. 160(1) of the Constitution. If s. 30 is applicable to the interpretation of art. 150(3) of the Constitution then the objection raised by the defence will immediately crumble as the previous operation of Ordinance No. 22 will be preserved by virtue of s. 30 notwithstanding its annulment.

In attempting to resolve this issue I find it necessary to first consider the distinction between perpetual and temporary statutes and the common law position with regard to the application of s. 30 to them.

A legislation is perpetual when no time is fixed for its duration (see *Jotindranath v. Province of Bihar* AIR [1949] FC 175). It does not mean that such a statute cannot be repealed. It is perpetual in the sense that it does not cease to have effect by efflux of time (see *Hebbert v. Purchas* [1871] LR 3 PC 605). A statute is temporary when its duration is only for a specified time (see *Jotindranath v. Province of Bihar* AIR [1949] FC 175). It is now appropriate to consider the status of Ordinance No. 22. Article 150(3) of the Constitution provides, *inter alia*, that an ordinance made under art. 150(2B) of the Constitution shall cease to have effect if resolutions are passed by both Houses annulling such ordinance. Clause (7) reads as follows:

> At the expiration of a period of six months beginning with the date on which a Proclamation of Emergency ceases to be in force, any ordinance promulgated in pursuance of the Proclamation and, to the extent that it could not have been validly made but for this Article, any law made while the Proclamation was in force, shall cease to have effect, except as to things done or omitted to be done before the expiration of that period.

As a time period has been prescribed for the expiry of an ordinance made under art. 150(2B) of the Constitution such an ordinance, like Ordinance No. 22, is a temporary legislation. A critical distinction in common law between temporary and perpetual statutes is that s. 30, which is limited in its operation to repeals, has no application when a temporary statute expires (see *Wicks v. Director of Public Prosecution* [1947] 1 All ER 205; *State of UP v. Jagmanderdas* AIR [1954] SC 683; *Gopichand v. Delhi Administration* AIR [1959] SC 609 and *State of Orissa v. Bhupendra Kumar* AIR [1962] SC 945).

The resultant issue that arises for determination is whether legal proceedings can be continued or initiated after a temporary statute has expired. This would depend on the construction of the statute as a whole. Normally a temporary statute contains a saving provision similar to s. 30. In the absence of such a provision the general rule is that a proceeding taken against a person under a

temporary statute terminates as soon as the statute expires. This is lucidly explained by the Court of Criminal Appeal in *R v. Wicks* [1946] 2 All ER 529 where Lord Goddard CJ said at pp. 531-532:

> Considering the position, first, at common law as to the expiration or repeal of a statute, in our opinion, the position may be taken as now settled. The leading authority is *Steavenson v. Oliver* [1841] 8 M & W 234. In that case, Parke, B., said 8M & W 234, at p. 241:
>
> > There is a difference between temporary statutes and statutes which are repealed; the latter (except so far as they relate to transactions already completed under them) become as if they had never existed; but with respect to the former, the extent of the restrictions imposed, and the duration of the provisions, are matters of contribution.
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> That passage was considered and approved by Roche, J in *Spencer v. Hooton* [1920] 37 TLR 280, and, in our opinion, is a correct statement of the law. It is worth observing that in *Steavenson v. Oliver* [1841] 8 M & W 234 there are dicta both by the Chief Baron and by Alderson, B which go further, and appear to say that in any case where a man offends against a temporary statute he can be convicted and punished after its expiration, but, in our opinion, this is contrary to the older cases which were not cited to the judges, in particular *Miller's* case [1764] 1 Wm B1 451 and *R v. McKenzie* [1820] Russ & Ry 429. At the present day it is most unlikely that any question of this nature will arise where an Act has been repealed because the position is sufficiently dealt with by the Interpretation Act, 1889 s. 38(2)(c) and (d), which provides that the repeal of an Act passed after the commencement of that Act shall not, unless the contrary intention appears, affect any liability incurred or effect any penalty or punishment incurred in respect of any offence committed against any enactment so repealed, and the section goes on to provide that any legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed. This section, however, has no application to statutes which have expired, and the question must, therefore, remain one of construction whether the provision as to expiry are such as to make it impossible for a prosecution or other proceeding to be either instituted or brought to conviction, or whether, on a true construction of the Act, Parliament has provided that legal proceedings, whether of a civil or criminal character, can be prosecuted in relation to matters connected with the Act after it has expired.

It is significant to remember that the common law that I have adverted to is applicable only when a temporary statute expires. However, what I have discussed thusfar is now academic as s. 16(2) of the United Kingdom Interpretation Act 1978 provides that the general savings which by statue applied to a repeal would also extend to an expired statute. A similar provision is contained in s. 32 which reads as follows:

> Sections 28, 29, 30 and 31 shall apply on the expiry of a written law as they would have applied if that law had been repealed.

It is therefore clear that s. 30 would apply to a statute which has expired. It follows that s. 30 would apply to Ordinance No. 22 when it expires as prescribed. However, the case at bar is not concerned with the result of a statute when it expires but its effect when it ceases to have effect before its expiry date. It has been held that where a statute is repealed before its expiry s. 30 would apply (see *State of Punjab v. Mohar Singh* AIR [1955] SC 84). Thus the position is the same even when a statute ceases to have effect before its expiry date. This rule, however, would become applicable to Ordinance No. 22 only if its manner of ceasing to have effect, that is to say, by way of an annulment, can be said to be equivalent to it being repealed.

That brings into focus whether the annulment of a statute, as in the case of Ordinance No. 22, amounts to a repeal of it. The words "annul" and "repeal" are defined in *Black's Law Dictionary* 6th edn, as follows:

> *Annul*
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> To reduce to nothing; annihilate; obliterate; to make void or of no effect; to nullify; to abolish; to do away with. To cancel; destroy; abrogate.
>
> *Repeal*
>
> The abrogation or annulling of a previously existing law by the enactment of a subsequent statute which declares that the former law shall be revoked and abrogated (which is called "express" repeal), or which contains provisionary so contrary to or irreconcilable with those of the earlier law that only one of the two statutes can stand in force (called "implied" repeal). To revoke, abolish, annul, to rescind or abrogate by authority.

It will therefore be observed that the meanings of annul and repeal are clearly the same as both seek to abrogate a statute. They amount to the use of different words to achieve the same result. As Francis Bennion says in his book entitled *Statutory Interpretation* 2nd edn at p. 201:

> The law has made use of many synonyms for the operation known as repeal, often in the same sentence.

Accordingly, the word "repeal" has been properly defined in s. 3 of the Interpretation Acts 1948 and 1967 as:

> … … … includes rescind, revoke, cancel and replace.

The use of the word "includes" in the definition of "repeal" shows that the definition provided is not exhaustive and thus includes the annulment of a statute as it has the same effect as the other words included in the meaning of "repeal" to which I have just referred. In the premises it is my view that the annulment of a statute is the repeal of it. The required resolutions passed by both Houses of Parliament to annul Ordinance No. 22 as provided by art.

150(3) of the Constitution would therefore constitute the repealing law for the purposes of s. 30. The corollary is that s. 30 would apply to Ordinance No. 22 once it is effectively annulled. I pause to refer to the defence submission that the words "… as if the repealing law had not been made" in s. 30 means that there must be a repeal of one legislation by another and that the absence of a repealing law in the case of an annulment renders s. 30 inapplicable. In my opinion this argument cannot be sustained in the light of s. 32 which extends s. 30 to a law that has expired. In the case of a law that has expired there is no repealing law. Section 32 read with s. 30 means that the effect of expiry of a statute is the same as if it had been repealed by another statute.

The next issue that arises for consideration is whether the saving provision contained in art. 150(3) of the Constitution excludes the application of s. 30 to it. This saving provision must be contrasted with the one in *Wicks v. Director of Public Prosecution* [1947] AC 362 which reads as follows:

> The expiry of this Act shall not affect the operation thereof as respects things previously done or omitted to be done.

It must be observed that the English provision is widely worded. Thus the words "previously done" which are not qualified in any way were held to refer to prosecutions instituted. In the case of the saving provision in art. 150(3) of the Constitution the same words are qualified by the words "… by virtue of …" which as contended by the defence means "… on the strength of …" The saving provision therefore refers to anything previously done on the strength of Ordinance No. 22. Clearly the words used cannot refer to the commission of an offence as no offence can be committed on the strength of a statute. It also cannot refer to the institution of a prosecution as no prosecution can be instituted on the strength of Ordinance No. 22 but by virtue of art. 145(3) of the Constitution read with s. 376 of the Criminal Procedure Code. In my opinion therefore the saving provision does not deal with prosecutions. It has been held that where a statute is repealed with a proviso "except as to things done under it" the provision is designed to safeguard the validity of orders, appointments, etc, issued under the repealed statute (see *Basant Singh v. Rampal Singh* AIR [1919] Oudh 217; *Ram Prasad v. State of Punjab* AIR [1966] SC 1607). The proviso in the Indian cases that I have just referred to is the same as the proviso in art. 150(3) of the Constitution as the word "… under …" in the former has the same effect as the words "… by virtue of …" in the latter. It must also be remembered that the saving provision in art. 150(3) of the Constitution is a general provision designed to apply generally, wherever possible, to all ordinances promulgated under art. 150(2B) of the Constitution. It is thus my view that the saving provision deals with notifications, directions or appointments made under a particular ordinance so as not to invalidate such acts upon the annulment of the ordinance

concerned. In any event this provision is a special saving provision meant to supplement s. 30 and does not affect the general applicability of that section. In this regard Francis Bennion in his book entitled *Statutory Interpretation* 2nd edn in commenting on the United Kingdom Interpretation Act 1978 s. 16(1), equivalent to s. 30, says at p. 207:

> *Special savings.* The general savings given here are often supplemented by special provisions in the repealing Act itself. Occasionally such special provisions may entirely displace these general savings.

The language employed in the saving provision is not so worded as to displace s. 30. It merely emphasises what is provided by s. 30(1)(a) without in any way curtailing the other parts of s. 30.

It is therefore my view that the annulment of Ordinance No. 22 will not take away the right of the public prosecutor to institute a prosecution even after its annulment. In the premises I dismissed the objection raised by the defence and proceeded with the trial.